

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matters of)	
)	
Herring Broadcasting, Inc. d/b/a	)	MB Docket No. 08-214
WealthTV,)	
Complainant	)	File No. CSR-7709-P
v.)	
Time Warner Cable Inc.)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a	)	File No. CSR-7822-P
WealthTV,)	
Complainant)	
v.)	
Bright House Networks, LLC,)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a	)	File No. CSR-7829-P
WealthTV,)	
Complainant)	
v.)	
Cox Communications, Inc.,)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a	)	File No. CSR-7907-P
WealthTV,)	
Complainant)	
v.)	
Comcast Corporation,)	
Defendant)	

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: The Hon. Richard L. Sippel
Chief Administrative Law Judge

February 10, 2009

DEFENDANTS' MOTION FOR ADOPTION OF PROTECTIVE ORDER

Defendants Time Warner Cable, Inc., Bright House Networks, LLC, Cox Communications, Inc. and Comcast Corp. (collectively "Defendants") hereby move for the entry of a confidentiality protective order in the above-captioned cases (collectively, the "Proceeding") that will protect all parties' confidential information from harmful disclosure as a result of this proceeding. The form of Defendants' proposed Protective Order is attached as Exhibit A hereto.

I. PRELIMINARY STATEMENT

The allegations of the complaints in these cases and the materials submitted to the Media Bureau prior to the issuance of the Hearing Designation Order in these cases show beyond any doubt that the evidence (both documents and testimony) which will be produced in this case will discuss all of the following, if not more: the terms and conditions of Defendants' programming agreements with third parties, the terms and conditions of WealthTV's programming agreements with third parties, the substance of all parties' program contract negotiations with third parties, the goals and objectives of all parties with respect to negotiation of programming contracts, and the business considerations and criteria that the Defendants have used in evaluating the carriage of WealthTV and other programming services. This kind of information obviously is confidential and obviously is valuable to a competitor or a third party. For any programming service or competing multichannel video programming distributor ("MVPD") to learn information about the terms and conditions of Defendants' current program service contracts, the details of Defendants' internal negotiating objectives, the criteria that Defendants use in evaluating program services, and so on would give that program service or MVPD a substantial – and unfair – advantage in any subsequent negotiation. Since these facts form the heart of this case, it is inevitable that a substantial portion of the evidence will contain confidential information that should be disclosed in the most limited way possible.

While WealthTV and the Defendants agree on the need for a Protective Order in this case, and, through negotiation, have agreed on both language and substance for the great bulk of the proposed Protective Order's provisions, they were unable to reach agreement with respect to two issues: (1) the procedures to be followed during the hearing when confidential information is going to be disclosed in testimony or exhibits (paragraph 5 of the proposed Protective Order) and (2) a time period during which all parties' retained experts should be restricted from being able to accept a subsequent engagement to negotiate or advise in negotiating programming contracts adverse to any of the parties here (paragraph 8(e) of the proposed Protective Order). With the exception of these two issues, the Defendants' proposed protective order reflects the substantive provisions and language that was agreed upon between Defendants and WealthTV.

II. DISCUSSION

A. The Protective Order Needs a Minimally Disruptive Provision for Excluding Persons from the Hearing Room when Confidential Information is Being Presented.

Both Defendants and WealthTV agree that witnesses will be required to testify about and exhibits will be required to contain confidential information. A substantial part of this case is going to be about the details of Defendants' programming decisions, about WealthTV's efforts to seek carriage from other MVPDs and about the terms and conditions of the parties' contracts with third parties. As the Commission has consistently recognized, "disclosure of programming contracts between multichannel video program distributors and programmers can result in substantial competitive harm to the information provider."¹

The parties agree that, when such information is being elicited through testimony, the only persons in the hearing room, other than the Administrative Law Judge, the court reporter

¹ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 61 (1998). See also *In the Matter of AT&T Services, Inc. v. Cox Enterprises, Inc.*, Order, 23 FCC Rcd 14176, ¶ 7 (rel. Oct. 3, 2008) (acknowledging that programming contracts are "so competitively sensitive that additional protection is warranted so that such information is closely guarded and not made available publicly"); *Application of News Corporation and The DIRECTV Group, Inc. and Liberty Media Corporation For Authority to Transfer Control*, Protective Order, 22 FCC Rcd 12797, ¶ 3 (2007) (granting "more limited access" to programming contracts "which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace").

and Enforcement Bureau personnel are the parties' Authorized Representatives. This is hardly unprecedented in Commission practice. In *WorldCom, Inc.*, the protective order provided, in part, "Any oral testimony in this proceeding which is expected to include references to confidential information will be taken *in camera*. . ."² The Defendants propose the following language to describe how counsel for the parties should conduct themselves:

If any Reviewing Party desires to include, utilize, or refer to any Confidential Information in testimony or exhibits during the hearing or during a deposition in such a manner that might require disclosure of such material, it shall serve such Confidential Information in a manner reasonably calculated to ensure its confidentiality is maintained. Examination of a witness concerning Confidential Information shall be conducted in camera and closed to all persons except Authorized Representatives of Reviewing Parties, Enforcement Bureau separated trial staff, the Presiding Judge and his staff, a witness then testifying, and the hearing reporter. Upon objection by any party that oral testimony during the hearing is likely to lead to discussion of Confidential Information, the Presiding Judge may order the hearing room to be closed during such period as set forth above. Persons present at the hearing may not disclose the contents of the testimony to any person that is not an Authorized Representative of a Reviewing Party, or is not Enforcement Bureau separated trial staff, prior to the designation of Confidential Information in transcripts described in Paragraph 6 of this Protective Order. With respect to testimony that does not involve Confidential Information, the hearing will not be closed.

Defendants' proposed Protective Order ¶5.

This language serves two purposes: (1) it gives all parties notice of what confidential information is going to be introduced into the hearing and (2) it provides for limiting those who are present during the hearing when such confidential information is the subject of examination or argument. Implicit certainly in these provisions is the concept that examining counsel and/or counsel for the party whose confidential information is being discussed will cooperate in advising the Administrative Law Judge as to when attendance at the hearing needs to be restricted.

² 16 FCC Rcd 11945 (CCB June 6, 2001) at ¶6; *see also*, *Cavalier Telephone Co.*, 18 FCC Rcd 18330 (WCB Sept. 3, 2003) at ¶5 (same language).

Defendants could not accept WealthTV's proposed language, which had two untenable features: (1) it required the parties to commit to avoiding the use of confidential information "to the maximum extent possible," only allowing such use when it was "unavoidable" and (2) it required the examination (regardless of whether direct, cross or re-direct) to be segmented into confidential and non-confidential portions. Defendants believe that such requirements unfairly and improperly compromise their advocacy by interfering with their right to present their case as they see fit, based on the law and the evidence that is available. Secondly, such language invites collateral disputes over whether, for example, it was "unavoidable" that a party use or refer to a certain piece of confidential information in its case presentation. Finally, both the artificially constrained structuring of the parties' presentations to the ALJ and the possibility of collateral disputes about the parties' use of confidential information create the likelihood that the hearing will be more protracted than necessary, which is in no one's interest. For these reasons, Defendants urge the ALJ to accept their proposed Protective Order language regarding the use of confidential information in the hearing.

B. The Retained Consultants' Ability to Accept Other Work Assignments that Could Harm a Party as a Result of that Consultant's Access to Confidential Information Must Be Curtailed for a Limited Period.

As the *curriculum vitae* of the experts retained in this case will show, many of them have, in the past, taken work as consultants for either programming networks or MVPDs to assist them in negotiating programming contracts. During the course of their work in this Proceeding, they will inevitably learn confidential information that could be useful to them in some future engagement, representing either another program network negotiating with one of the Defendants or representing an MVPD negotiating with WealthTV or some other program network.³ While the Defendants and WealthTV agree that a use restriction for such information

³ It is worth noting that, not infrequently, the Commission, or one of its Bureaus, has simply prohibited – without limitation – an expert who has access to "highly confidential information" from participating in business decisions, which most certainly would include programming contract negotiations. *See, e.g. EchoStar Satellite L.L.C. v.*

is appropriate,⁴ in light of the highly confidential information⁵ that these experts will learn, the Defendants believe that, for a limited period, experts in this Proceeding must be prohibited from taking assignments where even their knowledge of confidential information could unfairly disadvantage a party. Therefore, Defendants' proposed Protective Order provides that, for a period of one year (until February 13, 2010), these experts "will not negotiate, advise, or otherwise work for any person or entity in connection with the negotiation of agreements for the sale, licensing, or carriage of video programming, where such negotiations are adverse to the Designating Party."⁶

This restriction reflects the reality that no person can erase from his mind information that he recently has learned. Thus, even an expert acting in good faith to comply with the use restriction who, for example, advises some program service in contract negotiations with one of the Defendants, is simply not able to erase from his mind everything he learned from this case just months earlier.

This possibility has been recognized by, for example, the International Trade Commission, one of whose administrative law judges observed:

The key to getting under the protective order usually is not whether you are an expert in the technology but whether you will learn something under the protective order that you cannot forget, and that you may use to your benefit in the future, regardless of whether you intend to use it. Some information that an expert learns simply cannot be forgotten. This information may be used by the expert in his own work inadvertently, simply because he is aware of certain facts

Home Box Office, Inc., 21 FCC Rcd 14197, 14202 (MB 2006); *Adelphia Communications Corp.*, 20 FCC Rcd 20073, 20079 (MB 2005). See also *News Corp. and the DirecTV Group, Inc.*, 22 FCC Rcd 12797, App. A ¶ 5 (MB 2007) (outside consultants who are "involved in the competitive decision-making activities of any competitor of a Submitting Party" are prohibited from gaining access to highly confidential information).

⁴ See, Defendants' proposed Protective Order at ¶12.

⁵ The Defendants and WealthTV agree that: "'Highly Confidential Information' means Confidential Information so designated by a Designating Party upon a determination in good faith that such information would, if disclosed to a counterparty or competitor of the Designating Party, significantly disadvantage the current or future negotiating or competitive position of the Designating Party." Defendants' proposed Protective Order at ¶2(g); agreed-upon language.

⁶ Defendants' proposed Protective Order at ¶8(e).

that he otherwise would not have known, and even though he does not intend to violate the protective order.⁷

This is especially so when that information is likely to be highly significant in the context of his new assignment. The one-year “cooling off period” provides two benefits: (1) it makes it easier for the expert consultant to forget what he learned in this case and (2) it diminishes the utility of that information in some subsequent assignment because it will not be timely. This limitation would not restrict the consultant’s ability to accept assignments adverse to parties not in this case. So, for example, a person who was an expert in this case could immediately advise a programming service in negotiations with some other MVPD, such as DirecTV; or she could immediately represent one of the Defendants here (or any other MVPD) in negotiating with any of the hundreds of program services other than WealthTV.

The Defendants’ proposed Protective Order has the identical “cooling off period” that all parties in the coordinate *Mid-Atlantic Sports Network* case agreed to – one year from this coming Friday.⁸ Such restrictions are not uncommon in program carriage agreement litigation. For example, the undersigned counsel for Bright House Networks represented the National Cable Television Cooperative in a “baseball-style” regional sports network carriage agreement arbitration against The News Corporation, owner of the Fox regional sports networks.⁹ In that case, which involved access to one party’s program carriage agreements and information about its contract negotiations, the parties agreed to (and the arbitrator ordered) a 17-month restriction on the employment of the expert who was retained by NCTC in that case.¹⁰ A copy of that protective order and agreement are attached as Exhibit B hereto.

⁷ *Certain Memory Devices with Increased Capacitance and Products Containing Same*, 1995 ITC LEXIS 170 at 3 (“*Certain Memory Devices*”) (emphasis added).

⁸ See, “Joint Motion for Adoption of Protective Order,” *TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Comcast Corporation*, MB Docket No. 08-214, File No. CSR-8001-P (February 9, 2009) and accompanying “Proposed Protective Order” at ¶8(e).

⁹ This was done under the aegis of the Commission’s Order in *General Motors Corp., Hughes Electronics Corp. and The News Corporation, Ltd.*, FCC 03-330, 19 FCC Rcd 473 (2004).

¹⁰ Since News Corporation’s experts did not have access to any confidential NCTC information in the case, there was no need for a similar restriction on News Corporation’s experts.

Likewise, the undersigned counsel for Time Warner Cable (Mr. Cohen) represented that company in a program carriage dispute and baseball-style carriage contract arbitration with Mid-Atlantic Sports Network.¹¹ In that case, which also involved similar, highly confidential information, the parties agreed to – and the arbitrator ordered – just over a six-month employment restriction for the experts who had access to highly confidential information. Defendants note that their proposal falls in between the time limits of the restrictions in these other two, prior cases.

By contrast, WealthTV – although initially consenting to a three-month restriction – takes the position that no restriction is appropriate. Apparently, WealthTV finds it perfectly acceptable that its experts should learn not only the details of the Defendants’ carriage agreements with the MOJO program service that they own but also the details of a host of Defendants’ other programming service agreements and then be able turn around and assist a program service in negotiating a new contract with one of the Defendants.

The Defendants do not agree. A party should not be put at risk of commercial harm, simply by virtue of being a defendant in a case in which some of its most important commercial secrets are made a part of the factual nexus. The one-year limitation on the experts’ ability to accept appointments adverse to the parties here represents a reasonable compromise between jeopardizing the parties’ business operations as a result of disclosing confidential information about them and limiting the scope of an expert’s employment opportunities.

III. CONCLUSION

Defendants regret that they could not come to 100 percent agreement with WealthTV regarding the terms of the proposed protective order. However, it was simply unacceptable to them that their counsels’ advocacy in this case be compromised by restricting their use of

¹¹ See *TCR Sports Broadcasting Holding, LLP d/b/a The Mid-Atlantic Sports Network*, DA 08-2441 (Media Bureau rel. October 30, 2008).

confidential information at the hearing to only circumstances where it was “unavoidable,” given that nearly all of the evidence in this case – whether oral or written – is going to be rife with confidential and highly confidential information.

Likewise it was unacceptable to the Defendants that some of the most sensitive confidential business information about their programming contracts and practices would be disclosed to a consultant who, immediately upon the conclusion of the hearing in this case, could be sitting across the negotiating table from one of them representing some other programming service in contract discussions.

Defendants’ proposed Protective Order provides for a reasonable and efficient method of handling confidential information during the hearing that does not impinge on any party’s advocacy, and it imposes a reasonable time restriction on experts’ post-hearing engagements adverse to any of the parties here, which provides both Complainant and Defendants with some protection from commercial injury as a result of having to disclose sensitive competitive information in this case. For these reasons, Defendants ask the Administrative Law Judge to adopt their proposed protective order, attached hereto.

Respectfully submitted,

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Dated: February 10, 2009

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CERTIFICATE OF SERVICE

I, Micah M. Caldwell, hereby certify that copies of the foregoing “Defendants’ Motion for Adoption of Protective Order” were served this 10th day of February, 2009, via email, upon the following:

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Micah M. Caldwell

Exhibit A

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
Herring Broadcasting, Inc. d/b/a)	MB Docket No. 08-214
WealthTV,)	
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Defendant)	
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WealthTV,)	
Complainant)	
v.)	
Comcast Corporation,)	
Defendant)	

PROTECTIVE ORDER

1. This Protective Order (the “Order”) is intended to protect trade secrets and other commercially sensitive confidential information contained in (i) documents that are produced, given or exchanged by and among the Parties, or produced by non-parties, and deposition testimony provided as part of discovery in the Proceeding, and (ii) documents and testimony submitted as part of the record in the course of the Proceeding. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

2. Definitions.

(a) Authorized Representative. “Authorized Representative” means an individual who has signed and filed a Declaration in the form of Attachment A to this Order (except as set forth in subparagraph (a)(i)) and is one of the following:

(i) Outside Counsel of Record for a Reviewing Party to this Proceeding, or any associated attorney, paralegal, clerical staff member or other employee or subcontractor reasonably necessary to render professional services in this Proceeding (except that a paralegal or other non-attorney employee of any Outside Counsel of Record for a Reviewing Party shall not be required to sign or file a Declaration for the purpose of one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data containing Confidential Information or designing programs for handling data containing Confidential Information, or performing other clerical or ministerial functions with regard to documents containing Confidential Information);

(ii) In-house counsel engaged in the conduct of this Proceeding and their associated clerical staff to the extent reasonably necessary to assist in-house counsel in rendering professional services in this Proceeding;

(iii) Specified persons, including, but not limited to, employees and subcontractors of the Reviewing Parties and experts engaged by Reviewing Parties, requested by Authorized Representatives to furnish testimony and/or technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of participating in this Proceeding or directing or overseeing in-house counsel’s prosecution or defense of this Proceeding; and

(iv) Any person designated by the Presiding Judge in the public interest.

(b) Commission. “Commission” means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

(c) Confidential Information. “Confidential Information” means information, whether captured in oral or written form (including, but not limited to, documents produced by the Parties in discovery, exhibits, transcripts of testimony, pleadings filed in the Proceeding, notes and work papers made by an Authorized Representative and all copies thereof), so designated by a Designating Party (hereinafter defined) upon a determination in good faith that such information constitutes trade secrets or commercial or financial information privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) or any other *bona fide* claim of right or privilege. Confidential Information includes additional copies of, notes, and information derived from Confidential Information. Confidential Information also includes transcripts of hearing sessions to the extent described in Paragraphs 5 and 6.

(d) Declaration. “Declaration” means a sworn declaration in the form of Attachment A to this Order.

(e) Designating Party. “Designating Party” means a person or entity that seeks confidential treatment pursuant to this Order for Confidential Information submitted in this Proceeding.

(f) Enforcement Bureau Separated Trial Staff. “Enforcement Bureau Separated Trial Staff” means Enforcement Bureau staff working in this Proceeding.

(g) Highly Confidential Information. “Highly Confidential Information” means Confidential Information so designated by a Designating Party upon a determination in good faith that such information would, if disclosed to a counterparty or competitor of the Designating Party, significantly disadvantage the current or future negotiating or competitive position of the Designating Party. Highly Confidential Information includes additional copies of, notes regarding, and information derived from, Highly Confidential Information.

(h) Outside Counsel of Record. “Outside Counsel of Record” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing the Parties in this Proceeding, including their attorneys, paralegals, clerical staff and other employees or subcontractors reasonably necessary to render professional services in this Proceeding. For the avoidance of doubt, Outside Counsel of Record shall exclude any employee of any of the Parties and includes the following law firms only as of the date of this Order: Wilkinson Barker Knauer, LLP; Willkie Farr & Gallagher LLP; Davis Polk & Wardwell; Fleischman and Harding LLP; Sabin Bermant & Gould LLP; Dow Lohnes PLLC; Paul Weiss Rifkind Wharton & Garrison LLP; Kathleen Wallman, PLLC; and Kellogg, Huber, Hanser, Todd, Evans & Figel, P.L.L.C. (limited to attorneys who, as of the date of this Order, have entered an appearance on behalf of WealthTV). Outside Counsel of Record from firms other than those specified above or sole practitioners who subsequently enter appearances on behalf of one of the Parties in this Proceeding shall be recognized as such and included in this definition.

(i) Parties. The “Parties” to this Proceeding are Herring Broadcasting, Inc. d/b/a WealthTV, Time Warner Cable Inc., Bright House Networks, LLC, Cox Communications, Inc., Comcast Corporation, and the separated trial staff of the Enforcement Bureau of the Commission (the “Enforcement Bureau”). No other entity or natural person may become a Reviewing Party in this Proceeding absent the express, written consent of all of the Parties and the express, written authorization of the Presiding Judge. No entity or natural person other than one of the Parties or a non-party who produces documents or gives testimony in this Proceeding may become a Designating Party in this Proceeding absent the express, written consent of all of the Parties and the express, written authorization of the Presiding Judge.

(j) Presiding Judge. “Presiding Judge” means the Honorable Richard L. Sippel, Chief Administrative Law Judge, or such other official as may subsequently be appointed by the Commission or the Chief Administrative Law Judge to preside over this Proceeding.

(k) Reviewing Party. “Reviewing Party” means a Party whose Authorized Representative has signed a Declaration.

(l) Proceeding. “Proceeding” means only the proceeding to adjudicate the complaints in File Nos. CSR-7709-P, CSR-7822-P, CSR-7829-P, and CSR-7907-P, and does not include the adjudication of any other complaint in the above-captioned docket.

3. Claim of Confidentiality. A Designating Party may designate information as “Confidential Information” or “Highly Confidential Information” consistent with the definitions of those terms in Paragraphs 2(c) and 2(g) of this Protective Order.

(a) The Presiding Judge may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 and 0.461, determine that all or part of any information designated as “Confidential Information” is not entitled to protection as such because it is not a trade secret or commercial or financial information privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) or any other *bona fide* claim of right or privilege.

(b) The Presiding Judge may, *sua sponte* or upon petition, determine that all or part of any information designated as “Highly Confidential Information” is not entitled to protection as such because its disclosure to a counterparty or competitor of the Designating Party would not significantly disadvantage the current or future negotiating or competitive position of the Designating Party. There shall be a rebuttable presumption that the following information is entitled to protection as Highly Confidential Information: (i) confidential agreements for the sale, licensing, or carriage of video programming, video programming services, or components thereof to which the Designating Party is a party and (ii) descriptions of any commercially sensitive term of an agreement described in subparagraph (b)(i).

(c) Prior to making any determination under subparagraph (a) or (b) that designated information is not entitled to protection as Confidential Information or Highly Confidential Information, the Presiding Judge shall afford the Designating Party notice and opportunity to comment. The Designating Party shall bear the burden of establishing that information is entitled to protection as Confidential Information or Highly Confidential information. In the event that the Presiding Judge determines that designated Confidential Information or Highly Confidential Information will not be afforded confidential or highly confidential treatment, the Designating Party shall have three (3) business days following notice of the decision to withdraw that information from the record without public disclosure of the designated Confidential Information or Highly Confidential Information.

4. Procedures for Claiming Documents and Data Are Confidential or Highly Confidential.

(a) Documents or data shall be designated as Confidential Information or Highly Confidential Information for purposes of this Order by affixing the legend “CONFIDENTIAL [AND/OR HIGHLY CONFIDENTIAL], SUBJECT TO PROTECTIVE ORDER IN FCC FILE NOS. CSR-7709-P, 7822-P, 7829-P, 7907-P” to the front page of the document or data or, for data, to the outside of the container or medium in which the data is produced. The inadvertent failure to designate a document or data as Confidential Information or Highly Confidential Information does not constitute a waiver of such claim and may be corrected by supplemental written notice at any time, accompanied by a copy of the document or data bearing the appropriate legend, with the effect that such document or data shall be subject to the protections of this Order from the time it is designated as Confidential Information or Highly Confidential Information.

(b) Confidential Information and/or Highly Confidential Information submitted in writing to the Presiding Judge or the Commission shall be filed under seal and shall bear on the front page in bold print, "CONFIDENTIAL [AND/OR HIGHLY CONFIDENTIAL], SUBJECT TO PROTECTIVE ORDER IN FCC FILE NOS. CSR-7709-P, 7822-P, 7829-P, 7907-P." Such filings shall also comply with Paragraph 13 of this Protective Order.

5. Confidential Information in Deposition Testimony, Oral Hearing Testimony and Oral Argument. If any Reviewing Party desires to include, utilize, or refer to any Confidential Information in testimony or exhibits during the hearing or during a deposition in such a manner that might require disclosure of such material, it shall serve such Confidential Information in a manner reasonably calculated to ensure its confidentiality is maintained. Examination of a witness concerning Confidential Information shall be conducted in camera and closed to all persons except Authorized Representatives of Reviewing Parties, Enforcement Bureau separated trial staff, the Presiding Judge and his staff, a witness then testifying, and the hearing reporter. Upon objection by any party that oral testimony during the hearing is likely to lead to discussion of Confidential Information, the Presiding Judge may order the hearing room to be closed during such period as set forth above. Persons present at the hearing may not disclose the contents of the testimony to any person that is not an Authorized Representative of a Reviewing Party, or is not Enforcement Bureau separated trial staff, prior to the designation of Confidential Information in transcripts described in Paragraph 6 of this Protective Order. With respect to testimony that does not involve Confidential Information, the hearing will not be closed.

6. Designation of Confidential Information in Transcripts.

(a) Deposition testimony may be designated as Confidential Information or Highly Confidential Information by (i) a statement on the record, by counsel, at or before the conclusion of the deposition, or (ii) by written notice, sent by counsel to all parties within five (5) business days after the receipt of the preliminary transcript of the deposition. Deposition testimony shall be considered Confidential Information until five (5) business days from the receipt by counsel of the preliminary transcript, so as to allow for possible designation under subparagraph (a)(ii). The parties may modify this procedure for any particular deposition through agreement on the record at such deposition, or other written agreement, without further order of the Presiding Judge;

(b) The transcripts of oral hearing testimony and oral argument will be considered Confidential Information until seven (7) business days after the transcript for the last day of the hearing involving the Parties to this Protective Order is made available to the Parties by the hearing reporter. During this period, any of the Reviewing Parties may designate portions of the transcripts as Confidential Information by identifying the page numbers and specific language so designated in a confidential submission filed with the Office of the Secretary and served on each of the Authorized Representatives of the Reviewing Parties in this Proceeding and on Enforcement Bureau separated trial staff. Such designation shall consist of a substitute transcript page in which the designated Confidential Information is redacted. Pages redacted pursuant to this paragraph must be clearly marked "Redacted." Following this seven (7) business day period, the transcripts, except for portions designated by one or more of the Reviewing Parties as Confidential Information, will no longer be deemed Confidential Information. The hearing reporter

shall not provide transcripts containing Confidential Information to anyone other than Outside Counsel of Record for the Parties in this Proceeding. Enforcement Bureau separated trial staff, and the Presiding Judge and his staff.

7. Storage of Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Presiding Judge, the Commission pursuant to a proper request under the Freedom of Information Act, or a court having jurisdiction.

8. Access to Confidential Information.

(a) The following persons may obtain access to Confidential Information and Highly Confidential Information without executing the attached Declaration: (i) the Presiding Judge and his staff; (ii) Enforcement Bureau separated trial staff; (iii) the hearing (or deposition) reporter; (iv) to the extent exceptions or other pleadings containing Confidential Information or Highly Confidential Information are filed with the Commission, the Chairman, Commissioners or other Commission staff working on or assisting the Commission in connection with its decision on such exceptions or other pleadings; (v) any reviewing court and its associated personnel; and (vi) paralegals, service vendors, or other non-attorney employees or subcontractors of an Authorized Representative for the purpose of one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this Proceeding, or performing other clerical or ministerial functions with regard to documents connected with this Proceeding, it being understood that to the extent any Confidential Information in the possession of any Authorized Representative is accessed, inadvertently or otherwise, by any paralegal, clerical staff member, employee, subcontractor or any other person who has not signed a Declaration, the applicable Authorized Representative shall be held responsible for any violation of this Order.

(b) Except as provided in subparagraph (a), Confidential Information (excluding Highly Confidential Information) may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to Authorized Representatives of Reviewing Parties, as defined by Paragraph 2(a) of this Order. Before an Authorized Representative of a Reviewing Party may obtain any access to Confidential Information, such person must execute a Declaration.

(c) Except as provided in subparagraph (a), Highly Confidential Information may be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part only to the following Authorized Representatives of Reviewing Parties: (i) one in-house litigation counsel of a Reviewing Party who is not involved in day-to-day negotiation of programming or carriage agreements; (ii) a Reviewing Party's Outside Counsel of Record or an expert or consultant who is not an employee of a Reviewing Party and is working with a Reviewing Party's Outside Counsel of Record in connection with one or more of the above-captioned cases; or (iii) any other specific Authorized Representative of a Reviewing Party, but only to the extent that the Presiding Judge or the Commission

determines, based on a showing by the Reviewing Party, that such other Authorized Representative has a compelling need to access specific Highly Confidential Information.

(d) Except as otherwise provided in this paragraph, Confidential Information or Highly Confidential Information shall not be disclosed to any other person. All persons who obtain Confidential Information or Highly Confidential Information in this Proceeding shall ensure that access to that Confidential Information or Highly Confidential Information is strictly limited as prescribed in this Order and is used only as provided in this Order.

(e) Highly Confidential Information shall only be disclosed to an outside consultant or expert according to the terms of this subparagraph. For the purposes of this Order, an outside consultant or expert shall be restricted to a person who is retained or employed as a bona fide consultant or expert for purposes of this Proceeding, whether full or part time, by or at the direction of the Reviewing Party's outside counsel of record. Any such outside consultant or expert shall not, during the pendency of this Proceeding and for a period ending February 13, 2010, negotiate, advise, or otherwise work for any person or entity in connection with the negotiation of agreements for the sale, licensing, or carriage of video programming, where such negotiations are adverse to the Designating Party. Before disclosing any Highly Confidential material, documents or information covered by this Order to any such outside consultant or expert, each outside consultant or expert so retained or employed shall sign and file a Declaration in the form of Attachment A to confirm that he or she has read this subparagraph, meets the requirements of this subparagraph, and is bound by the obligations set forth herein.

9. Procedures for Obtaining Access to Confidential Information. In all cases where access to Confidential Information by Authorized Representatives of Reviewing Parties is permitted pursuant to Paragraph 8, before reviewing or having access to any Confidential Information, except as provided in Paragraph 8(a), each person seeking such access shall execute a Declaration, file it with the Commission, and serve it upon the Designating Party by First Class mail and via email through their Outside Counsel of Record. Except as provided in Paragraph 8, no person may have access to or review Confidential Information until two (2) business days have elapsed from the day his or her Declaration has been filed and served upon the other Parties or until any objections to particular persons who have signed a Declaration are resolved. Each Party (other than the Enforcement Bureau) shall have an opportunity to object to the disclosure of its Confidential Information to any person who signs a Declaration. Any objection must be filed with the Presiding Judge and served on Outside Counsel of Record representing, retaining, or employing such person as promptly as practicable after receipt of the relevant Declaration, but in no event later than two (2) business days of receipt of the Declaration. Until any such objection is resolved by the Presiding Judge and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Party (other than the Enforcement Bureau) shall not have access to Confidential Information.

10. Disclosure. An Authorized Representative of a Reviewing Party may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under this Protective Order.

11. Requests for Additional Disclosure. If any person requests that the Commission disclose Confidential Information outside the terms of this Protective Order, that request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules, 47 C.F.R. §§ 0.442, 0.461.

12. Use of Confidential Information and Highly Confidential Information. Except as provided in paragraph 8(d) of this Order, Confidential Information and Highly Confidential Information shall be used solely for the preparation and conduct of this Proceeding; shall not be used for any other purpose (including but not limited competitive business purposes); and shall not be disclosed except in accordance with this Order. This Order shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to Confidential Information or Highly Confidential Information nor otherwise learned of its contents. Should the Commission rely upon or otherwise make reference to the contents of any of the Confidential Information or Highly Confidential Information in its decision in this Proceeding, it will do so by redacting any Confidential Information or Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Confidential Information and Highly Confidential Information under this Order.

13. Pleadings or Filings Using Confidential Information. Parties may, in any pleadings or other documents that they file in this Proceeding, reference Confidential Information, but only if they comply with the following procedures:

(a) Any portions of the filings that contain or disclose Confidential Information or Highly Confidential Information must be physically segregated from the remainder of the filings and filed under seal in accord with the remainder of this paragraph. This requirement is satisfied when a Party files (1) a redacted version of the document; and (2) a non-public version of the document (of which only one copy should be filed) that contains the Confidential Information or Highly Confidential Information bears the legend set forth in Paragraph 13(c);

(b) The portions or versions of pleadings containing or disclosing Confidential Information must designate the specific portions of the pleading containing such Confidential Information or Highly Confidential Information;

(c) The cover page and each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "CONFIDENTIAL [AND/OR HIGHLY CONFIDENTIAL], SUBJECT TO PROTECTIVE ORDER IN FCC FILE NOS. CSR-7709-P, 7822-P, 7829-P, 7907-P"; and

(d) The confidential version of the pleading, to the extent it is required to be served, shall be served upon the Secretary of the Commission, Outside Counsel of Record that have signed the attached Declaration, and Enforcement Bureau separated trial staff, with a courtesy copy to the Presiding Judge and his assistant, where relevant. Such

confidential versions shall be filed under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Designating Party and an opportunity to comment on such proposed disclosure). Except as provided above, Parties may not provide courtesy copies of pleadings containing Confidential Information to any other person, including the Chairman, Commissioners, or Commission staff.

14. Client Consultation. Nothing in this Order shall prevent or otherwise restrict Outside Counsel of Record from rendering advice to their clients relating to the conduct of this Proceeding or any subsequent administrative or judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information and Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Outside Counsel of Record shall not disclose Confidential Information or Highly Confidential Information except as consistent with this Order.

15. Violations of Order. Should a Reviewing Party that has properly obtained access to Confidential Information or Highly Confidential Information under this Order violate any of its terms, it shall immediately convey that fact to the Designating Party, which may choose to bring it to the attention of the Presiding Judge as appropriate. Further, should such violation consist of improper disclosure or use of Confidential Information or Highly Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Designating Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information or Highly Confidential Information through any such disclosure. The Commission and, to the extent that the Commission's authority is so delegated, the Presiding Judge retain their full authority to fashion appropriate sanctions for violations of this Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Order shall limit any other rights and remedies available to the Designating Party at law or equity against any person using Confidential Information or Highly Confidential Information in a manner not authorized by this Order.

16. Termination of Proceeding. Within two weeks after final resolution of this Proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall, at the direction of the Designating Party, make their best efforts to destroy or return to the Designating Party all Confidential Information and Highly Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Designating Party that such best efforts have been conducted to ensure that no Confidential Information or Highly Confidential Information has been retained by any person having access thereto, except that each Outside Counsel of Record representing a Reviewing Party may retain two paper copies and one electronic copy of all pleadings filed in this Proceeding and all transcripts created in connection with this Proceeding, regardless of whether such pleadings or transcripts contain Confidential Information. Any Confidential Information contained in any copies of pleadings or transcripts retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be

protected from disclosure or use indefinitely in accordance with this Protective Order unless such Confidential Information or Highly Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Presiding Judge, the Commission, or a court having jurisdiction. Authorized Representatives of Reviewing Parties shall have a continuing obligation to destroy any previously undestroyed documents if and when they are discovered.

17. No Waiver of Confidentiality. Disclosure of Confidential Information or Highly Confidential Information as provided herein shall not be deemed a waiver by the Designating Party of any entitlement to confidential treatment of such Confidential Information or Highly Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use Confidential Information or Highly Confidential Information in any proceeding other than such as permitted herein unless obtained independently of this Proceeding; and (c) agree that accidental disclosure of Confidential Information or Highly Confidential Information shall not be deemed a waiver of entitlement to confidential treatment of such Confidential Information or Highly Confidential Information.

18. Subpoena by Courts, Departments, or Agencies. If a court or a federal or state department or agency issues a subpoena or orders production of Confidential Information or Highly Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify in writing each Designating Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that the Designating Party has a full opportunity to oppose such production, which shall be at least five (5) business days prior to the production or disclosure of any Confidential Information or Highly Confidential Information.

19. Additional Rights Preserved. The entry of this Order is without prejudice to the rights of the Designating Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information or Highly Confidential Information.

20. Effect of Order. This Order constitutes an order of the Presiding Judge and an agreement among the Parties and the persons executing the attached Declaration. This Order will continue in force until modified by the Presiding Judge, and its protections will remain in force after the conclusion of the hearing phase of this Proceeding.

21. Authority. This Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. §§ 0.457(d), 1.313, and Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
Herring Broadcasting, Inc. d/b/a	)	MB Docket No. 08-214
WealthTV,)	
Complainant	)	File No. CSR-7709-P
v.)	
Time Warner Cable Inc.)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a)	
WealthTV,	)	File No. CSR-7822-P
Complainant)	
v.)	
Bright House Networks, LLC,)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a)	
WealthTV,)	
Complainant	)	File No. CSR-7829-P
v.)	
Cox Communications, Inc.,)	
Defendant)	
)	
Herring Broadcasting, Inc. d/b/a)	
WealthTV,)	
Complainant	)	File No. CSR-7907-P
v.)	
Comcast Corporation,)	
Defendant)	

DECLARATION

I, _____, hereby declare under penalty of perjury that I have read the protective order that has been entered by the Presiding Judge with respect to the above-captioned cases, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information and Highly Confidential Information submitted by parties to this Proceeding. I understand that the Confidential Information and Highly Confidential Information shall not be disclosed to anyone except in accordance with the terms of the protective order and shall be used only for purposes of the above-captioned Proceeding (except as otherwise provided in the protective order). In particular, I will not use the Confidential Information or Highly Confidential Information for competitive commercial or business purposes, including competitive decision-making.

To the extent that I am an outside consultant or expert as defined in subparagraph 8(e) of the protective order, I acknowledge that I have read subparagraph 8(e) of the protective order and agree, in addition to the restrictions set forth above, to be bound by the obligations described in subparagraph 8(e). In particular, and without limitation, in conformity with subparagraph 8(e) and paragraph 12, I agree not to use or rely on any Confidential Information or Highly Confidential Information in connection with the negotiation of agreements for the sale, licensing or carriage of video programming, including any advice or other work related thereto, where such negotiations are adverse to the Designating Party. In addition, I understand and agree to comply with the procedures described in paragraph 16 of the protective order regarding the destruction or return of all Confidential and Highly Confidential Information to which I have access as well as any copies and derivative materials made, including the continuing obligation to destroy any previously undestroyed documents if and when they are discovered.

I acknowledge that a violation of the protective order is a violation of an order of the Federal Communications Commission. I acknowledge that this Declaration is also a binding agreement with the Designating Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(date) _____

Exhibit B

AMERICAN ARBITRATION ASSOCIATION

NATIONAL CABLE TELEVISION
COOPERATIVE, INC., as collective bargaining
agent,

Claimant,

-against-

The NEWS CORPORATION c/o FOX SPORTS
TELEVISION,

Respondent.

Case No. 57 472 E 00011 07

**CONFIDENTIALITY AGREEMENT
AND STIPULATED PROTECTIVE
ORDER**

Claimant National Cable Television Cooperative, Inc. (the "NCTC"), as the collective bargaining agent for Cannon Valley Cablevision, Carolina Mountain Cablevision, Inc., Chester Telephone Company, Community Television Co., Inc., Concept Communication Corp., Country Industries (CVSN), Dixie Cable TV Co., Inc., En-tel Communications, Inc., Familyview Cablevision, F J Communications, Inc., Hart Cable, Inc., Heart of the Lakes Cable Systems, Hutchinson Telecommunications Inc., Hutchinson Telephone Company, KM Telecom, Lakedale Telephone Company, City of Lebanon, MLGC, LLC, Net Cable Inc., Newnan Water Sewerage & Light, Piedmont Cable Services, Inc., Pine Island Telephone Co., Project Services, Inc., Rapid Communications, LLC, Savage Communications, Inc., Sherburne Cable-Com, Southeast Cable TV, Inc., Stanley/Portal Cablevision, Strategic Technologies, Inc., Trust Cable TV, Inc., and Valley Cable & Satellite Comm, Inc. (collectively, the Named MVPDs"), one the one hand, and Fox Cable Networks Group ("Fox Cable"), on behalf of Fox Sports Net North, LLC, Fox Sports Net Northwest, LLC, Fox Sports Net Ohio, LLC, SportsSouth Network, LLC, SportsSouth Network II, LLC, Fox Sports Net Southwest, a division of ARC Holding, Ltd., and

Fox Sports Net Florida, Inc. (collectively, the “Services”), on the other hand, hereby agree as follows.

1. INTRODUCTION

This Arbitration proceeding was brought pursuant to the procedures set forth in the Memorandum Opinion and Order released by the Federal Communications Commission (“the FCC”) on January 14, 2004, in MB Docket No. 03-124 (“the FCC Order”). Under the terms of the FCC Order, the “[p]arties may request that access to information of a commercially sensitive nature be restricted to the arbitrator and outside counsel and experts of the opposing party.” The NCTC and Fox Cable (each a “Party,” and collectively, the “Parties”) hereby agree to be bound by this Confidentiality Agreement, and also request and stipulate to the entry of its terms as a Protective Order by the Arbitrator in this Proceeding, to protect the confidentiality of Confidential Information and Highly Confidential Information that may be produced in the course of the Arbitration proceeding.

2. DEFINITIONS

The following words shall have the following meanings:

(a) “Confidential Information” means information contained in Confidential Documents (as defined in Section 4 below) or Designated Confidential Testimony (as defined in Section 5 below), and information derived from Confidential Documents or Designated Confidential Testimony that is not otherwise available from publicly available sources;

(b) “Highly Confidential Information” means information contained in Highly Confidential Documents (as defined in Section 4 below) or Designated Highly Confidential

Testimony (as defined in Section 5 below), and information derived from Highly Confidential Documents or Designated Highly Confidential Testimony that is not otherwise available from publicly available sources;

(c) "Counsel" means In-House Counsel and Outside Counsel of Record;

(d) "In-House Counsel" means attorneys (i) who are employed by the Parties for the primary purpose of providing legal advice, and (ii) who are actively engaged in the conduct of this Arbitration proceeding;

(e) "Outside Counsel of Record" means attorneys and employees of the law firms of Fleishman and Walsh, LLP and Hogan & Hartson, LLP, who are actively engaged in the conduct of this Arbitration proceeding;

(f) "Document" means all written, recorded, electronically stored, or graphic material, whether produced or created by the Producing Party or another person;

(g) "Producing Party" is the Party producing Documents; and

(h) "Receiving Party" is the Party to whom the Producing Party has produced Documents.

3. USE OF CONFIDENTIAL INFORMATION

(a) Anyone obtaining access to Confidential Information (including Confidential Documents) and Highly Confidential Information (including Highly Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of this Arbitration proceeding as set forth in this Confidentiality Agreement and Stipulated

Protective Order, and any subsequent administrative or judicial proceeding arising directly therefrom. Except as provided herein, anyone obtaining access to Confidential Information (including Confidential Documents) and Highly Confidential Information (including Highly Confidential Documents) under this Protective Order shall not use such Documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.

(b) Should the Arbitrator rely upon or otherwise make reference to the contents of any of the Confidential Documents or Confidential Information or Highly Confidential Documents or Highly Confidential Information in his decision in this Arbitration proceeding, or attach any Confidential Documents or Highly Confidential Documents thereto, the Arbitrator shall release this decision only to those persons entitled to access to the relevant category of information (Confidential Information or Highly Confidential Information) under this Confidentiality Agreement and Stipulated Protective Order. Pursuant to the FCC Order, the Arbitrator subsequently shall prepare an additional version of the decision with all Confidential Information and Highly Confidential Information redacted (and not attaching any Confidential Documents or Highly Confidential Documents). The unredacted version of the decision containing Confidential Information or Highly Confidential Information, or attaching Confidential Documents or Highly Confidential Documents, may be made available only to the FCC (in the event of an appeal from the Arbitrator's decision or a specific request from the FCC) and to those persons entitled to access to the relevant category of information (Confidential Information or Highly Confidential Information) under this Confidentiality Agreement and Stipulated Protective Order. If it becomes necessary to file the unredacted version of the decision with the

FCC, it shall be filed with a “request for confidential treatment” under the FCC’s Rules of Practice, 47 C.F.R. §§ 0.457, et seq.

4. NON-DISCLOSURE OF CONFIDENTIAL DOCUMENTS AND HIGHLY CONFIDENTIAL DOCUMENTS

(a) Except with the prior written consent of the Producing Party, or as hereinafter provided under this Confidentiality Agreement and Stipulated Protective Order, no Confidential Document, Highly Confidential Document, Confidential Information, or Highly Confidential Information may be disclosed by a Receiving Party other than to those persons authorized pursuant to the terms of this Protective Order to receive such information.

(b) A “Confidential Document” shall mean any Document, or part thereof, that bears the legend “CONFIDENTIAL INFORMATION — SUBJECT TO PROTECTIVE ORDER.” A Producing Party shall designate a Document or information as “Confidential” only upon a good-faith belief that the Document or information is commercially sensitive in nature or otherwise is “Confidential.”

(c) A “Highly Confidential Document” shall mean any Document, or part thereof, that bears the legend “HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS’ EYES ONLY — SUBJECT TO PROTECTIVE ORDER.” A Producing Party shall designate a Document or information as “Highly Confidential” only if the Document is a trade secret or if the information is so sensitive that its disclosure would cause competitive harm to the Producing Party.

(d) A Receiving Party shall have the right to challenge the designation of a Document as “Highly Confidential” and, if the Parties cannot agree on the proper designation of the Document

through meeting and conferring, the Arbitrator shall determine whether the “Highly Confidential” designation is appropriate in light of the terms and restrictions of the Order. The Arbitrator shall conclude that such a designation is inappropriate only if no reasonable person or entity would have designated the Document or information as “Highly Confidential.”

5. NON-DISCLOSURE OF DESIGNATED CONFIDENTIAL TESTIMONY AND DESIGNATED HIGHLY CONFIDENTIAL TESTIMONY

(a) “Designated Confidential Testimony” and “Designated Highly Confidential Testimony” shall mean testimony given at a hearing or in a deposition that is designated as Confidential Testimony or Highly Confidential Testimony on the record at the time the testimony is taken or by thereafter providing written notice to Outside Counsel for the Parties, the court reporter, and all attendees at such hearing or deposition session. Counsel may make such designations based on a good faith belief that the testimony should be subject to such protection as is afforded under this Protective Order.

(b) All persons present during the taking of testimony designated as Confidential Information or Highly Confidential Information, other than the Arbitrator (if present), Counsel and the court reporter, must execute Appendix A and must not disclose the contents of such testimony to anyone not authorized to receive Confidential Information or Highly Confidential Information, as the case may be. Anyone not authorized to receive Highly Confidential Information may, at the option of the Party that designated the testimony as Highly Confidential Information, be excluded from the portion of the Arbitration hearing or deposition session in which such testimony is given (provided, however, that the Producing Party and/or the examining Party will use reasonable efforts to organize testimony regarding Highly Confidential Information in a manner that minimizes the number of times such persons will be required to

leave the room in which the testimony is being given and the amount of time they will need to be out of the room).

(c) If testimony is transcribed, and is designated as Confidential or Highly Confidential, the transcript of the designated testimony shall be bound in a separate volume and marked “CONFIDENTIAL INFORMATION — SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL INFORMATION — ATTORNEYS’ EYES ONLY — SUBJECT TO PROTECTIVE ORDER” as the designating Party directs, by the court reporter on each applicable page and shall not be made part of any public record.

(d) Regardless of designations made prior to transcription, each transcript in its entirety shall be treated as “HIGHLY CONFIDENTIAL” until ten (10) business days after the receipt of the transcript by Counsel for the Party whose information has been disclosed. Until ten (10) business days after the receipt of the transcript, testimony may be designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” by giving written notice to all Outside Counsel of Record with respect to any further testimony (by page and line numbers) to be designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

6. PERMISSIBLE DISCLOSURE

(a) Permissible Disclosure of Confidential Information and Confidential Documents

Subject to the requirements of paragraph 8, Confidential Documents may be reviewed by Counsel. Subject to the requirements of paragraph 8, Counsel may disclose Confidential Documents and other Confidential Information only to: (1) employees of the Parties who are not also officers, directors or employees of any MVPDs, including the Named MVPDs, or of the

Services, to the extent Counsel in good faith believe such disclosure is required to assist them in the conduct of this Arbitration proceeding, (2) outside consultants, attorneys, or experts who are assisting Counsel in this Arbitration proceeding, provided that such persons are not involved in the business decisions of any competitor of any Producing Party, or of any MVPDs (including the Named MVPDs) or Services, and do not participate in, or provide advice concerning, those business decisions; (3) paralegals or other employees of such Counsel who are assisting Counsel in this Arbitration proceeding; (4) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving Documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to Documents connected with this Arbitration proceeding; (5) employees of third-party contractors performing one or more of the functions set forth in clause 4 of this paragraph 6(a); (6) witnesses in the course of testifying where Counsel has a reasonable and good faith belief that examination with respect to the Document or information is for legitimate hearing purposes and there is no reasonable alternative means to induce the anticipated testimony; (7) a person who is being prepared to testify where Counsel has a reasonable and good faith belief that such person will be a witness in this Arbitration proceeding and that examination with respect to the Document or information is prudent in connection with such testimony, and there is no alternative means of preparing the witness; (8) the Arbitrator; and (9) any court reporter transcribing any portion of this Arbitration proceeding. Anyone who has obtained access to Confidential Documents and Confidential Information in accordance with the provisions of this paragraph 6(a) and paragraph 8 may discuss and share the contents of the Confidential Documents and Confidential Information with any other person

whose access to the Documents and information is authorized by paragraph 6(a) and paragraph 8.

(b) Permissible Disclosure of Highly Confidential Information and Highly Confidential Documents.

Subject to the requirements of paragraph 8, Highly Confidential Documents may be reviewed by Outside Counsel of Record. Subject to the requirements of paragraph 8, Outside Counsel of Record may disclose Highly Confidential Documents and other Highly Confidential Information only to: (1) outside consultants, attorneys, or experts who are assisting Outside Counsel of Record in this Arbitration proceeding, provided that such persons are not involved in the business decisions of any competitor of any Producing Party, or of any MVPDs (including the Named MVPDs) or Services, and do not participate in, or provide advice concerning, those business decisions; (2) paralegals or other employees of such Outside Counsel of Record who are assisting Outside Counsel of Record in this Arbitration proceeding; (3) employees of such Outside Counsel of Record involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving Documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to Documents connected with this Arbitration proceeding; (4) the Arbitrator; and (5) any court reporter transcribing any portion of this Arbitration proceeding. Anyone who has obtained access to Highly Confidential Documents and Highly Confidential Information in accordance with the provisions of this paragraph 6(b) and paragraph 8 may discuss and share the contents of the Highly Confidential Documents and Highly Confidential Information with any other person whose access to the Documents and information is authorized by the provisions of this paragraph 6(b) and paragraph 8.

7. PROTECTION OF CONFIDENTIAL DOCUMENTS AND CONFIDENTIAL INFORMATION, AND OF HIGHLY CONFIDENTIAL DOCUMENTS AND HIGHLY CONFIDENTIAL INFORMATION

Those persons described in paragraph 6 shall have the obligation to ensure that access to Confidential Documents and Confidential Information and Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that Confidential Documents, Highly Confidential Documents, Confidential Information and Highly Confidential Information are used only as provided in this Protective Order.

8. PROCEDURES FOR OBTAINING ACCESS TO CONFIDENTIAL DOCUMENTS AND HIGHLY CONFIDENTIAL DOCUMENTS

In all cases where access to Confidential Documents, Highly Confidential Documents, Confidential Information, and Highly Confidential Information is permitted pursuant to paragraph 6, before reviewing or having access to any Confidential Documents, Highly Confidential Documents, Confidential Information, or Highly Confidential Information, each person being given such access shall execute the appropriate Acknowledgment of Confidentiality ("Acknowledgment") (see Appendix A).

9. FILINGS WITH THE ARBITRATOR AND THE FCC

The Parties may, in any documents that they file in this Arbitration, reference Confidential Information or Highly Confidential Information, but only if they comply with the following procedure:

(a) A redacted and an unredacted version of any pleading that contains or discloses Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly

Confidential Information shall be served on the Arbitrator and Outside Counsel (but not the AAA). The unredacted version shall be identified as such on the first page of the pleading with the legend "Contains Confidential or Highly Confidential Information subject to Protective Order; Not for General Dissemination or Disclosure." The redacted version shall be identified as such on the first page of the pleading with the legend "Redacted Version of Pleading Containing Confidential or Highly Confidential Information."

(b) Any pleading containing or disclosing Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information shall be served on the Arbitrator and Outside Counsel along with a separate letter (which shall be transmitted to the AAA) that references this Confidentiality Agreement and Stipulated Protective Order, and advises the Arbitrator and Outside Counsel that the unredacted version of the pleading contains Confidential Information or Highly Confidential Information.

(c) Any page of the unredacted version of any pleading that contains or discloses Confidential Information or Highly Confidential Information subject to this Protective Order shall be clearly marked: "Confidential Information included pursuant to Protective Order" or "Highly Confidential Information included pursuant to Protective Order."

(d) In the event of an appeal to the FCC, the unredacted version of any pleading containing or disclosing Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information shall not be filed unless reasonably necessary, in which case it shall be filed with a "request for confidential treatment" under the FCC's Rules of Practice, 47 C.F.R. §§ 0.457, et seq.

(e) The Parties and the Arbitrator shall treat the Confidential and Highly Confidential portions of pleadings in accordance with the terms of this Confidentiality Agreement and Stipulated Protective Order.

10. CLIENT CONSULTATION

Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this Arbitration proceeding and any subsequent administrative or judicial proceedings arising therefrom and, in the course thereof, relying generally on examination of Confidential Documents or Confidential Information or, for Outside Counsel of Record, Highly Confidential Documents or Highly Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information except as otherwise allowed herein.

11. NO WAIVER OF CONFIDENTIALITY OR PRIVILEGE

Disclosure of Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Producing Party of any privilege, including the attorney-client privilege or work product doctrine, or of a Party's entitlement to confidential treatment of such Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information. Receiving Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information to seek disclosure of Confidential Information or Highly Confidential Information in any other proceeding; and (3) that accidental

disclosure of Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information by a Producing Party shall not be deemed a waiver of any privilege or entitlement; provided that the Producing Party takes prompt remedial action upon its discovery of an accidental disclosure.

12. SUBPOENA BY COURTS, DEPARTMENTS, AGENCIES, OR OTHER PERSONS

If a court, federal, state, or local department or agency, or any other or entity issues a subpoena or orders production of Confidential Documents or Confidential Information or Highly Confidential Documents or Highly Confidential Information that a Party or other person has obtained under terms of this Protective Order, such Party or person shall promptly notify each Producing Party of the pendency of such subpoena or order. As consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Producing Party has a full opportunity to oppose such production prior to the production or disclosure of any Confidential Document, Confidential Information, Highly Confidential Document, or Highly Confidential Information.

13. VIOLATIONS OF PROTECTIVE ORDER

Should anyone who has properly obtained access to Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Arbitrator and to Outside Counsel of Record for the Producing Party. Further, should such violation consist of improper disclosure of Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Arbitrator and the

FCC retain full authority to fashion appropriate sanctions for violation of this Protective Order. Nothing in this Protective Order shall limit any other rights and remedies available to the Producing Party at law or in equity against anyone using Confidential Documents, Confidential Information, Highly Confidential Documents, or Highly Confidential Information in a manner not authorized by this Protective Order.

14. CERTAIN DISCLOSURES NOT AFFECTED BY THIS PROTECTIVE ORDER

Nothing in this Order shall prevent a Party from using or disclosing its own information as it deems appropriate, nor shall this Order require any Party to afford confidential treatment to information or documents that the Party properly has received outside of this Arbitration proceeding without any duty of confidentiality.

15. TERMINATION OF PROCEEDING

The provisions of this Protective Order shall not terminate, but rather shall remain in full force and effect, at the conclusion of this Arbitration proceeding. Within two weeks after such conclusion, including any administrative or judicial review and all appeals therefrom, persons who received access to Confidential Documents, Confidential Information, Highly Confidential Documents or Highly Confidential Information pursuant to paragraph 6 hereof shall destroy or return to the Producing Party all such materials and all copies thereof. No material whatsoever derived from Confidential Documents, Confidential Information, Highly Confidential Documents or Highly Confidential Information may be retained by any individual or entity having access thereto, except Counsel may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information. Outside Counsel of Record also may retain an additional set of

pleadings (which may be in electronic format) containing Highly Confidential Information. All Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel of Record for the Producing Party not more than thirty (30) days after conclusion of this Arbitration proceeding. The provisions of this paragraph 15 regarding retention of Confidential Documents, Highly Confidential Documents, Confidential Information, and Highly Confidential Information, and copies of same, shall not be construed to apply to the FCC or its staff, or to materials submitted as evidence in the arbitration.

**AGREED TO BY THE PARTIES BY AND THROUGH THEIR COUNSEL OF
RECORD:**

Dated: July __, 2007

HOGAN & HARTSON, LLP

By: _____

Anthony Basich
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 785-4626
Email: ambasich@hhlaw.com
Attorneys for Respondents

Dated: July 9, 2007

FLEISCHMAN AND WALSH, LLP

By: _____

R. Bruce Beckner
1919 Pennsylvania Avenue NW
Suite 600
Washington, DC 20006
Telephone: (202) 939-7900
Email: BBeckner@fw-law.com
Attorneys for Claimants

SO ORDERED: _____

STEPHEN S. SMITH, ARBITRATOR

DATE: _____

7/9/07

pleadings (which may be in electronic format) containing Highly Confidential Information. All Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel of Record for the Producing Party not more than thirty (30) days after conclusion of this Arbitration proceeding. The provisions of this paragraph 15 regarding retention of Confidential Documents, Highly Confidential Documents, Confidential Information, and Highly Confidential Information, and copies of same, shall not be construed to apply to the FCC or its staff, or to materials submitted as evidence in the arbitration.

AGREED TO BY THE PARTIES BY AND THROUGH THEIR COUNSEL OF RECORD:

Dated: July 9, 2007

HOGAN & HARTSON, LLP

By: 

Anthony Basich
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 785-4626
Email: ambasich@hhlaw.com
Attorneys for Respondents

Dated: July __, 2007

FLEISCHMAN AND WALSH, LLP

By: _____

R. Bruce Beckner
1919 Pennsylvania Avenue NW
Suite 600
Washington, DC 20006
Telephone: (202) 939-7900
Email: BBeckner@fw-law.com
Attorneys for Claimants

SO ORDERED: 

STEPHEN S. STRICK ARBITRATOR

DATE: 7/9/07

APPENDIX A

AMERICAN ARBITRATION ASSOCIATION

NATIONAL CABLE TELEVISION
COOPERATIVE, INC., as collective bargaining
agent,

Claimant,

-against-

The NEWS CORPORATION c/o FOX SPORTS
TELEVISION,

Respondent.

Case No. 57 472 E 00011 07

ACKNOWLEDGEMENT OF CONFIDENTIALITY – CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION

I hereby acknowledge that I have received and read a copy of the foregoing Confidentiality Agreement and Stipulated Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Confidentiality Agreement and Stipulated Protective Order and that I shall not disclose or use Confidential Documents, Highly Confidential Documents, Confidential Information or Highly Confidential Information except as allowed by the Confidentiality Agreement and Stipulated Protective Order.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 6 of the foregoing Confidentiality Agreement and Stipulated Protective Order and that I will neither use such information in any

other capacity nor disclose such information except as specifically provided in the Confidentiality Agreement and Stipulated Protective Order.

I acknowledge that it is my obligation to ensure that Confidential Documents, Highly Confidential Documents, Confidential Information and Highly Confidential Information are used only as provided in the Confidentiality Agreement and Stipulated Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Documents, Highly Confidential Documents, Confidential Information or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Confidentiality Agreement and Stipulated Protective Order.

Executed at _____ the ____ day of _____,

_____.

[Name]
[Position]

[Address]
[Telephone]

JUL-9-2007 03:28 FROM:

TO: 12135598600

P.17/18

To: Bruce Bedner (Fax 202-745-0916)
 From: Fred Dreier
 Pages: 2

APPENDIX A

AMERICAN ARBITRATION ASSOCIATION

NATIONAL CABLE TELEVISION
 COOPERATIVE, INC., as collective bargaining
 agent,

Claimant,

-against-

The NEWS CORPORATION c/o FOX SPORTS
 TELEVISION,

Respondent.

Case No. 57 472 E 00011 07

**ACKNOWLEDGEMENT OF
 CONFIDENTIALITY -
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JUL-9-2007 03:29 FROM:

TO: 12135598600

P. 18/18

other capacity nor disclose such information except as specifically provided in the Confidentiality Agreement and Stipulated Protective Order.

I acknowledge that it is my obligation to ensure that Confidential Documents, Highly Confidential Documents, Confidential Information and Highly Confidential Information are used only as provided in the Confidentiality Agreement and Stipulated Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Documents, Highly Confidential Documents, Confidential Information or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Confidentiality Agreement and Stipulated Protective Order.

Executed at Westport, CT. the 14th day of August, 2007.

Notwithstanding sections 6(a) and 6(b) of the Confidentiality Agreement and Stipulated Protective Order, I will not do any consulting relating to Fox regional sports networks through December 31, 2008 but may otherwise consult for Time Warner Cable.

[Name] Fred M. Drester
[Position] Drester Media Partners
[Address] Principal
[Telephone] 17 Campo Parkway
Westport, CT. 06880
843-696-7663